

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-028-T - ORDER NO. 91-805 ✓

SEPTEMBER 30, 1991

IN RE: Application of Christopher Collins)
 DBA C & C Moving & Transporting Co.,) ORDER
 6 Cambridge Avenue, Charleston, SC) GRANTING
 29405, for a Class E Certificate of) APPLICATION
 Public Convenience and Necessity.)

This matter is before the Public Service Commission of South Carolina (the Commission) on the Application of Christopher Collins DBA C & C Moving & Transporting Co. (the Applicant), filed on January 11, 1991, for a Class E Certificate of Public Convenience and Necessity¹ to transport passengers as follows:

HOUSEHOLD GOODS, FOOD AND FOOD PRODUCTS, AND ALCOHOLIC
BEVERAGES: BETWEEN POINTS AND PLACES IN SOUTH
CAROLINA.

At the hearing the Applicant amended its Application to read as follows:

HOUSEHOLD GOODS, FOOD AND FOOD PRODUCTS: BETWEEN
POINTS AND PLACES IN SOUTH CAROLINA.

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of

1. "A class E motor carrier is a common carrier of property by motor vehicle which does not operate upon any particular route or particular schedule and which is commonly known as an irregular route common carrier." 26 S.C. Regs. 103-114(1976).

SEPTEMBER 30, 1991
PAGE 2

general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. The Notice of Filing was duly published in accordance with the instructions of the Executive Director. Petitions to Intervene were filed by Palmetto Moving & Storage, Inc. (Palmetto), Azalea Moving and Storage (Azalea), Brock Moving and Storage, Inc. (Brock), Charleston Moving and Storage (Charleston), Comac, Inc. (Comac), and J & C Moving & Storage, Inc. (J&C)².

A hearing was held at the Offices of the Commission on August 8, 1991. The Honorable Marjorie Amos-Frazier presided. The Applicant was represented by John F. Beach, Esquire; Palmetto, Azalea, Brock, Charleston, and Comac were represented by David G. Ingalls; J & C appeared pro se; and the Commission Staff was represented by Gayle B. Nichols, Staff Counsel.

Chris Collins and Kim Baker testified on behalf of the Applicant. Jay Cook and Debbie Cate testified on behalf of Palmetto, Azalea, Brock, Charleston, and Comac. Charles E. Harshaw testified on behalf of J & C.

After full consideration of the testimony presented and the applicable law, the Commission makes the following findings of fact and conclusions of law.

2. Palmetto, Azalea, Brock, Charleston, Comac, and J & C will be referred to collectively as the Intervenor.

FINDINGS OF FACT

1. According to S.C. Code Ann. §58-23-330(1990 Supp.), "[a]n applicant applying for a certificate... to operate as a motor vehicle common carrier may be approved upon a showing... that the applicant is fit, willing, and able to perform appropriately the proposed service. If an intervenor shows or if the [C]ommission determines that the public convenience and necessity is being served already, the [C]ommission may deny the application." The South Carolina Supreme Court has held that while an intervenor's testimony that its business will be adversely affected by the increased competition produced by an increased number of motor carriers is relevant, such testimony "is not determinative and 'should not in itself defeat an application for additional services'." Welch Moving and Storage Co. v. Public Service Commission, ___ S.C. ___, 391 S.E.2d 556, 557 (1990), citing Greyhound Lines, Inc. v. South Carolina Public Service Commission, 274 S.C. 161, 166, 262 S.E.2d 18, 21 (1980).

2. 26 S.C. Regs. 103-134(1)(A)(1)(Supp. 1990) provides, in relevant part, that the Commission use the following criteria to determine whether an applicant is fit, willing, and able to provide the requested service:

- (a) FIT The applicant must demonstrate or the Commission determine that the Applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T., SCDHPT, and PSC safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in

South Carolina and agrees to operate in compliance with these statutes and regulations.

- (b) ABLE The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- (c) WILLING Having met the requirements as to 'fit and able', the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

3. Chris Collins testified that the Applicant began moving household goods in October 1990. He explained that at that time the Applicant was unaware that it needed to obtain a certificate of public convenience and necessity from the Commission to conduct its business. Collins testified that after the Applicant was notified in December 1990 that it needed Commission authority, it filed an Application. Collins testified that the Applicant owns two vans; that there are no outstanding judgments against the Applicant; and that the Applicant's net worth exceeds \$30,000.³ Collins testified that since its operation began in October 1990, the Applicant has had no accidents and has not received any traffic citations. Collins testified that the Applicant has a secretary and two full-time drivers. Collins further testified that he trains the Applicant's drivers to securely load the cargo and safely operate

3. The Commission recognizes that the Applicant is a sole proprietorship and that Mr. Collin's personal assets are included in the Applicant's net worth.

the Applicant's vehicles. Collins testified that the Applicant has liability and cargo insurance on its vehicles in amounts which meet Commission regulations. Collins testified that the Applicant is fit, willing, and able to provide Class E service to transport household goods and that it is familiar with and would abide by the Commission's statutes and regulations governing for-hire motor carriers.

Collins further testified that the Applicant will move a single or a small number of household items and can often move household goods on the same day it receives a request. Additionally, Collins explained that the Applicant will move household goods after business hours and on weekends.

Finally, Collins testified that the Applicant has not yet moved any food products; he explained that the Applicant intends to purchase a vehicle to use to move food products and that it would not use the same equipment it uses to move household goods to transport food products.

4. Mr. Cook, Vice-President and co-owner of Azalea, testified that the Charleston-area moving business is fairly stable but that costs have increased over the past five years. He testified that increased competition among movers would have an adverse effect on Azalea. Additionally, Cook testified that, if granted authority, the Applicant should be required to observe all applicable Commission regulations.

5. Ms. Cate, Vice-President and shareholder of Brock, testified that Brock's revenues had decreased and its fixed costs

had increased over the past two years. She testified that Brock had intervened in this proceeding to protect its market share and to prevent increasing competition.

6. Mr. Harshaw, President of J & C, testified that J & C was a small mover in the Charleston area. He testified that there were presently too many moving companies for the amount of business and that, in his opinion, increasing the number of movers reduced the quality of the moving business. Accordingly, Mr. Harshaw explained that he had intervened in this proceeding to prevent further competition and to protect the public good. In addition, Mr. Harshaw stated that he was concerned that customers would confuse J & C with the Applicant's name, "C & C," and that this confusion may harm his business' reputation.

CONCLUSIONS OF LAW

1. The Applicant has demonstrated that it is fit, willing, and able to provide Class E service to points in South Carolina. Specifically, the Applicant has established that it has no outstanding judgments against it, and that it is familiar with the statutes and regulations governing for-hire motor carrier operations in South Carolina and that it agrees to operate in compliance with these statutes and regulations. Additionally, the Applicant has demonstrated that it has the equipment necessary to provide Class E service and has provided evidence of insurance which meets the Commission's requirements. While it has never received an official safety rating, it has had no traffic accidents or citations since its inception in 1990. Finally, the Applicant

has demonstrated that it is willing to provide Class E service.

2. Moreover, although the Intervenor testified that in their opinions the addition of another moving business would increase their competition, the Commission finds that, in and of itself, this increased competition is insufficient to defeat the Applicant's request for a Certificate of Public Convenience and Necessity. Welch Moving and Storage Co., supra. Even though there may be similar businesses in South Carolina, the Commission is convinced that there is a need for an additional moving company which will service small, short order moves. Accordingly, the Commission finds that the public convenience and necessity will be served by the addition of the Applicant's business.

3. Finally, the Commission finds that it has no authority to address J & C's concern that customers may confuse "C & C" with "J & C." While this Commission has jurisdiction to regulate certain aspects of a motor carrier's business, it does not have any authority to consider whether the selection of a business name constitutes common law trademark infringement.

IT IS THEREFORE ORDERED:

1. That the Application for Class E Certificate of Public Convenience and Necessity to transport Household Goods, Food and Food Products, Between Points and Places in South Carolina, is approved.

2. That the Applicant file the proper license fees and other information required by S.C. Code Ann. §58-23-10 et seq. (1976), and by 26 Regs. 103-100 through 103-208 (1976), within sixty (60) days

of the date of this Order, or within such additional time as may be authorized by the Commission.

3. That upon compliance with S.C. Code Ann. §58-23-10, et seq. (1976), and the applicable provisions of R.103-100 through R.103-280 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), a certificate shall be issued to the Applicant authorizing the motor carrier services granted herein.

4. That prior to compliance with such requirements and receipt of a certificate, the motor carrier services authorized herein may not be provided.

5. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)